

IN RE: PETITION FOR SPECIAL HEARING  
SW Corner Back River Neck Road  
and Cherry Garden Road  
(1006 Back River Neck Road)  
15th Election District  
5th Councilmanic District  
John Falkenstein, Sr., et ux  
Petitioners

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 92-264-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing requesting approval of a modified plan for parking, pursuant to Sections 409.12.B and 409.8.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a restaurant and bar located in the Chesapeake Bay Critical Areas in Eastern Baltimore County.

The Petitioners, John W. and Josephine Falkenstein, appeared, testified and were represented by Michael P. Tanczyn, Esquire. Mr. Tanczyn proffered testimony on behalf of the Petitioners. Appearing as an interested party in the matter was David C. Flowers with the Department of Environmental Protection and Resource Management (DEPRM). There were no Protestants.

Testimony indicated that the subject property, known as 1006 Back River Neck Road, consists of 1.78 acres zoned R.C. 20 and is improved with a one story frame building. Said property is the site of Johann's Tavern and is located within the Chesapeake Bay Critical Areas near Muddy Gut Creek and Back River. Petitioners are desirous of bringing the use of the property in compliance with all applicable Baltimore County regulations. However, due to Chesapeake Bay Critical Areas legislation and B.C.Z.R. requirements, the parking layout and use of the lot must be modified. Testimony indicated that Petitioners had been experiencing difficulty in

meeting the requirements of the Department of Environmental Protection and Resource Management (DEPRM) as to Critical Areas legislation. Mr. Tanczyn testified that the Petitioners have been diligently working with Mr. Flowers to comply with all requests made by DEPRM and other Baltimore County agencies, and that an agreement had been reached to the satisfaction of all parties concerning the requested modified plan. It was agreed by all parties at the hearing that Petitioners would submit a revised site plan evidencing the substance of all agreements entered into between them and Baltimore County.

On the face of the Petition for Special Hearing, Mr. Tanczyn represents that it is impossible for the Petitioners to comply with DEPRM requirements under the Critical Areas legislation and the B.C.Z.R. regarding parking in the Critical Areas. I disagree with his argument and find that it is possible to satisfy both sets of regulations. As a matter of fact, the Petitioners were successful in this particular case of satisfying all requirements and the modified plan, upon revision, shall be approved.

As previously noted, this property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any and all recommendations made by DEPRM in accordance with the agreement reached between them. A copy of DEPRM's findings plan shall be submitted to this Office for inclusion in the case file. Based upon the testimony presented, there is no evidence that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with DEPRM requirements as agreed to herein.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It

has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 27<sup>th</sup> day of February, 1992 that the Petition for Special Hearing requesting approval of a modified plan for parking, pursuant to Sections 409.12.B and 409.8.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a restaurant and bar in accordance with the revised site plan to be submitted and marked Exhibit A, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) Within thirty (30) days of the date of this Order, Petitioners shall submit to this Office a revised site plan evidencing the substance of the agreements reached between the Petitioners, DEPRM, and all other Baltimore County agencies. Said plan shall be marked Exhibit A and shall be the controlling site plan for this property.
- 3) Within thirty (30) days of the date of this Order, Petitioners shall submit a landscape plan for approval by the Deputy Director of Planning and the Landscape Planner for Baltimore County. A copy of the approved plan shall be submitted to this Office for inclusion in the case file.

4) Upon completion of their findings plan, DEPRM shall submit a copy of same to this Office for inclusion in the case file.

TWK:bjs

*Timothy M. Kotroco*  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

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- 3 -

- 1 -

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

February 29, 1992

Michael P. Tanczyn, Esquire  
606 Baltimore Avenue, Suite 106  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
SW Corner Back River Neck Road and Cherry Garden Road  
(1006 Back River Neck Road)  
15th Election District - 5th Councilmanic District  
John Falkenstein, Sr., et ux - Petitioners  
Case No. 92-264-SPH

Dear Mr. Tanczyn:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

*Timothy M. Kotroco*

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TWK:bjs

cc: Chesapeake Bay Critical Areas Commission  
Tawes State Office Building, D-4, Annapolis, Md. 21401

DEPRM

People's Counsel

File

## Petition for Special Hearing

to the Zoning Commissioner of Baltimore County 92-264-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a modified plan for parking pursuant to BCZR 409.12.B and pursuant to BCZR 409.8.B.1. The compliance with requirements of DEPRM under the Critical Areas legislation and the BCZR is impossible because of conflicting requirements of both sets of regulations and would represent an impossibility and undue hardship on the applicants for this property, formerly known as Cherry Garden Lounge and now Johann's, which is one of the oldest continuously operated restaurant/lounge in the eastern portion of Baltimore County.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

MICHAEL P. TANCZYN, ESQ.

(Type or Print Name)

Signature

606 BALTIMORE AVENUE, SUITE 106

Towson, Maryland 21204

City and State

Attorney's Telephone No.: 296-8823

Legal Owner(s):

JOHN FALKENSTEIN, SR.

(Type or Print Name)

Signature

JOSEPHINE FALKENSTEIN

(Type or Print Name)

Signature

1106 Valewood

Address

Towson, Maryland 21204

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

Phone No.

OFFICE USE ONLY  
ESTIMATED LENGTH OF HEARING - 1/2HR. +1HR.  
AVAILABLE FOR HEARING  
MON./TUES./WED. - NEXT TWO MONTHS  
ALL OTHER  
REVIEWED BY: DATE

Phone: 687-4922

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

April 13, 1989

Johann's Tavern  
1006 Back River Neck Road  
15th District Baltimore County, Maryland

Beginning for the same in the center of Back River Neck Road with the south side of Cherry Garden Road if extended easterly, thence running and binding on the center of Back River Neck Road South 5 degrees 49 minutes West 298.07 feet, thence leaving Back River Neck Road for two lines of division North 78 degrees 34 minutes West 268 feet and North 5 degrees 35 minutes East 279.73 feet to the south side of Cherry Garden Road, thence binding on the south side thereof South 82 degrees 30 minutes East 268 feet to the place of beginning.

Containing 1.78 acres of land more or less.



#### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 15th Date of Posting 4/13/89  
Posted for David Heaton  
Petitioner John & Josephine Falkenstein  
Location of property 1006 Back River Neck Road, 15th Election District, Baltimore County, Maryland  
Location of Signs 1006 Back River Neck Road, 15th Election District, Baltimore County, Maryland  
Remarks  
Posted by [Signature] Date of return 4/13/89  
Number of Signs 1

#### CERTIFICATE OF PUBLICATION

TOWSON, MD., 11/16, 1992

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 11/16, 1992

THE JEFFERSONIAN,

*S. Zeke Orlean*  
S. Zeke Orlean  
Publisher

NOTICE OF HEARING  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property located herein in Room 113, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:  
Case Number: 92-264-SPH  
1006 Back River Neck Road, 15th Election District, Baltimore County, Maryland  
Hearing Date: Monday, February 16, 1992 at 9:30 a.m.  
Petitioner(s): John and Josephine Falkenstein  
Respectfully inviting to approve a modified plan for parking.  
LAWRENCE E. SCHMIDT  
Zoning Commissioner of Baltimore County  
1/17/92 January 16,

98.36

**CERTIFICATE OF PUBLICATION**  
Office of  
**THE AVENUE NEWS**

442 Eastern Blvd.  
Barto. MD. 21221 January 16, 19 92

**THIS IS TO CERTIFY**, that the annexed advertisement of  
Falkenstein in the matter of Zoning Hearings  
for 1006 Back River Neck Rd. Case # 92-264-SPH  
P.O. #0116826, Req #M57337, 49 lines @.60 or  
\$29.40

**NOTICE OF HEARING**  
The Zoning Commissioner of  
Baltimore County, by authority of  
the Zoning Act and Regulations  
of Baltimore County will hold a  
public hearing on the property  
identified herein in Room 118,  
Baltimore County Courthouse,  
400 Washington Avenue,  
Towson, Maryland 21204 as fol-  
lows:  
Case Number: 92-264-SPH  
9/8 Back River Neck Road, 9/8 Cherry Garden Road and  
1006 Back River Neck Road (John's Tavern)  
15th Election District - 5th Councilmanic  
Petitioner(s): John and Josephine Falkenstein  
HEARING: MONDAY, FEBRUARY 10, 1992 at 9:30 a.m.  
Special Hearing to approve a  
modified plan for parking.  
Lawrence E. Schuler  
Zoning Commissioner of  
Baltimore County

was inserted in **The Avenue News** a weekly newspaper published in  
Baltimore County, Maryland once a week for 1 successive week(s)  
before the 17 day of January 19 92; that is to say,  
the same was inserted in the issues of January 16 1992

**The Avenue Inc.**  
per publisher  
By *Dwight Caldwell*

**Baltimore County**  
**Zoning Commissioner**  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Account: R-001-6150  
Number

Date

92-264

Cashier Validation

Please Make Checks Payable To: Baltimore County

receipt

**Baltimore County**  
**Zoning Commissioner**  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Account: R-001-6150  
Number

Date

92-264

Cashier Validation

Please Make Checks Payable To: Baltimore County

receipt

**Baltimore County Government**  
**Office of Zoning Administration**  
and Development Management  
**Office of Planning & Zoning**

111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

DATE: 1-22-92

John and Josephine Falkenstein  
1106 Valewood  
Towson, Maryland 21204

RE:  
CASE NUMBER: 92-264-SPH  
9/8 Back River Neck Road, 9/8 Cherry Garden Road on SMC of Back River Neck Road and Cherry Garden Road  
1006 Back River Neck Road (John's Tavern)  
15th Election District - 5th Councilmanic  
Petitioner(s): John and Josephine Falkenstein

Dear Petitioner(s):

Please be advised that \$ 98.36 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE REMOVED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 118, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

*Arnold Jablon*  
ARNOLD JABLON  
DIRECTOR

cc: Michael P. Tanczyn, Esq.

**Baltimore County Government**  
**Office of Zoning Administration**  
and Development Management  
**Office of Planning & Zoning**

111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

JAN 09 1992

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-264-SPH  
9/8 Back River Neck Road, 9/8 Cherry Garden Road on SMC of Back River Neck Road and Cherry Garden Road  
1006 Back River Neck Road (John's Tavern)  
15th Election District - 5th Councilmanic  
Petitioner(s): John and Josephine Falkenstein  
HEARING: MONDAY, FEBRUARY 10, 1992 at 9:30 a.m.

Special Hearing to approve a modified plan for parking.

*Arnold Jablon*  
Zoning Commissioner of  
Baltimore County

cc: Mr. & Mrs. Falkenstein  
Michael P. Tanczyn, Esq.

**Baltimore County Government**  
**Office of Zoning Administration**  
and Development Management  
**Office of Planning & Zoning**

111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

January 28, 1992

Michael P. Tanczyn, Esquire  
606 Baltimore Avenue, Suite 106  
Towson, MD 21204

RE: Item No. 278, Case No. 92-264-SPH  
Petitioner: John Falkenstein, et ux  
Petition for Special Hearing

Dear Mr. Tanczyn:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

**Zoning Plans Advisory Committee Comments**  
Date: January 28, 1992  
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,  
*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. John Falkenstein  
1106 Valewood Road  
Towson, MD 21204

**Baltimore County Government**  
**Office of Zoning Administration**  
and Development Management  
**Office of Planning & Zoning**

111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

Your petition has been received and accepted for filing this 3rd day of January, 1992.

*Arnold Jablon*  
ARNOLD JABLON  
DIRECTOR

Received By:  
*James E. Dyer*  
Chairman  
Zoning Plans Advisory Committee

Petitioner: John Falkenstein, et ux  
Petitioner's Attorney: Michael P. Tanczyn

**Baltimore County Government**  
**Fire Department**

700 East Joppa Road, Suite 901  
Towson, MD 21204-5500 JANUARY 13, 1992 (301) 887-4500

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: JOHN FALKENSTEIN, SR. AND JOSEPHINE FALKENSTEIN  
Location: #1006 BACK RIVER NECK ROAD  
Item No.: 278 Zoning Agenda: JANUARY 14, 1992

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *James E. Dyer* Noted and Approved  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JP/KEK

Mr. John Falkenstein

92-264-SPH

CRITICAL AREA 4.200

ST. JOHN'S CATHEDRAL REDEVELOPMENT  
CONCEPT PLAN

DESIGNED BY: [illegible]  
DATE: 12-1-89  
REVISION: 12-20-91

- (1) site plan
- (2) site plan
- (3) storm water management

(VARIABLE) 8'-0"

(VARIABLE WIDTH)

ST. JOHN'S CATHEDRAL

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ST. JOHN'S CATHEDRAL

OWNER:  
JOHN FALKENBERG  
1000 BACK RIVER NECK RD  
BALTO, MD 21221

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BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
OFFICIAL ZONING MAP

SCALE  
1" = 200'

DATE  
OF  
PHOTOGRAPHY  
JANUARY  
1986

LOCATION  
BACK RIVER NECK

SHEET  
SE  
2-1